

## **Purpose**

A Claims Review Board is established to hear unresolved claims and make recommendations for settlement to the Deputy Director of Transportation.

## **Policy**

The Contractor shall pursue administrative resolution of any claim with the Engineer or the designee of the Engineer. If no agreement is reached, at the Contractor's written request to the Engineer, the Engineer for Construction will schedule a hearing before a Department Claims Board of Review when deemed to be in the best interest of both the Contractor and the Department. The Claims Board of Review will make recommendations to the Deputy Director. Determinations made by the Deputy Director will be administratively final.

The Deputy Director will make offer of settlement in accordance with Utah Code 63-56-50. Appeals may be made to the State Procurement Appeals board in accordance with Utah Code 63-56-54. The Contractor also has the right of appeal to the Courts in accordance with Utah Code 63-56-58 and 63-56-59.

The Claims Board of Review is composed of:

A chairman appointed by the Project Development Engineer

Internal Auditor

Assistant Attorney General

Member to be selected by the Chairman from a list of candidates furnished by the Utah Chapter of Associated General Contractors.

The Board will meet as needed to review claims. UDOT will furnish a secretary who will make electronic recording of the claims hearing and provide notes or minutes if desired by the board.

The claim may be presented informally, with or without legal counsel. A written claim per Subsection 105.20 of the Standard Specifications will be required before a hearing will be scheduled.

The Board will make their recommendations and outline their reasoning to the Deputy Director within 30 days after the completion of the claim hearing.

The Deputy Director, as the official designee of the Executive Director of Transportation, shall consider the recommendations of the Claim Board of Review and become informed concerning the Contractor's claim to the extent deemed appropriate. A Written decision shall be provided as per section 63-56-50 of the Utah Code. Said decision shall outline, in general terms, the reasons for the decision. If the claim is rejected, or if the sum tendered by way of settlement is not acceptable to the contractor, the contractor may elect to proceed with an appeal to the State Procurement Appeals Board as outlined in section 63-56-54 or with a legal action as provided in section 63-56-59 of the Utah Code.

The Deputy Director shall issue a written decision within 45 days after the claim hearing

unless the parties stipulate in writing to an extension of time. Failure to issue a written decision within the specified time shall be considered as a denial of the claim.

**Procedures****Claims Board of Review****UDOT 08B-91.1****RESOLUTION OF CONTRACTOR'S CLAIMS****DISPUTES**

**Responsibility:** Contractor

**Actions**

1. During the progress of the work the Contractor shall give notification to the Engineer as specified in Subsection 104.5: Notification of Differing Site Conditions, Changes and Extra Work.
2. Follows direction of Subsection 105.20: Claims and Disputes, to resolve disputes with the Department.

**Responsibility:** Project Engineer

3. Notifies the Region Construction Engineer who notifies the Region Director and Deputy Construction Engineer (claims engineer) of actual or potential claims. If needed, requests help from the following: Deputy Construction Engineer (field), Deputy Construction Engineer (claims engineer), Assistant Attorney General.
4. Notifies the Engineer for Construction if the claim is based on differing site conditions or change condition which will be obliterated or concealed by subsequent construction activities.
5. On a Federal-aid project, immediately notifies the FHWA division office in accordance with established agreements of the contractor's intent to file a claim if the claim is based on differing site conditions or changed conditions which will be obliterated or concealed by subsequent construction activities and the total cost of the claim can be reasonably expected to exceed \$25,000. The notification does not need to be in writing but should be documented.
6. Establish and maintain a separate file which documents all facts and information relating to actual or potential claim until dispute or claim is resolved.
7. Responds following directions of Subsection 104.5 and Subsection 105.20. Every effort should be made to settle a dispute at the project level in a fair and timely manner.

**CLAIMS REQUESTING HIGHER LEVEL REVIEW**

**Responsibility:** Contractor

8. All disputes appealed by the Contractor requesting a higher level review shall be requested in the form described in Subsection 105.20.2.

**Responsibility:** Project Engineer

9. Determines that the claim is adequately prepared before accepting.
10. Review claim and prepares reply with recommendation for each item for which the Contractor has claimed additional payment or time.
11. Forward Contractor's claim and Project Engineer's responses through the Region Construction Engineer to the Engineer for Construction.

**Responsibility:** Engineer for Construction

12. Receives Contractor's claim and reviews it for compliance with the Standard Specifications for completeness of information necessary to determine validity of the claim. Returns claims to contractor or Project Engineer for additional information where data furnished is not complete.
13. Reviews Claims with Construction Office Staff.
14. On a Federal-aid project, prepares a "Notice of Claim" form summarizing the claim. Forwards a copy of this form to the FHWA division office or appropriate office in accordance with established agreements, within 30 days of receipt of a formal claim submission.
15. Decides whether to settle the claim or schedule a hearing before the Department's Claim Board of Review.
16. Prepares reply to the contractor stating chosen course of action. Coordinates the reply with the Attorney General's Office when appropriate.
17. If the Engineer for Construction decides to settle the claim, the Engineer for Construction and/or the Claims Engineer may act as mediators. The Contractor and Project Engineer each present their case relating to the claim. The Engineer for Construction and/or the Claims Engineer analyze both sides of the issues and decide, based upon the specifications and the Department's experience, if the Contractor's claim has merit. If the Engineer for Construction and/or the Claims Engineer determine the claim has merit, they will offer a settlement. If the Contractor accepts the settlement offer, a change order or supplemental final estimate shall be executed.
18. Forwards the reply to the contractor within 45 calendar days after the Engineer for

Construction receives the formal claim submission. In the event a final decision cannot be made within this time period, advises Contractor as to the status of claim and set date for final reply or meeting with the Contractor to discuss the claim in more detail.

**CLAIMS BOARD OF REVIEW**

**Responsibility:** Contractor

19. If decision of the Engineer for Construction is not acceptable to the Contractor, the Contractor may appeal in writing within 30 days to the Engineer for Construction requesting a hearing before the Department's Claims Board of Review. Upon this request, the negotiated offer is voided and the contractor cannot present the amount to any board or court in future appeals.

**Responsibility:** Deputy Construction Engineer (Claims)

20. Determines that the Region Construction Engineer and the Project Engineer understand the claim and are prepared to present UDOT's position.

21. Sets time of Hearing.

**Responsibility:** Claims Board of Review

22. Hear Contractor's claim and UDOT's position. All the issues regarding the claim must be presented to the board in writing prior to the hearing.

23. In separate meeting, determine recommendation for settlement. Submit written recommendation to Deputy Director of Transportation within 30 days of the claim hearing.

**Responsibility:** Deputy Director of Transportation

24. Notifies Contractor of the decision of the Department within 45 days of the claim hearing. This decision is administratively final.

**Responsibility:** Contractor

25. Accepts or Rejects offer in writing.

**Responsibility:** Engineer for Construction

26. If offer is accepted, prepares voucher for payment to Contractor.

**Responsibility:** Deputy Construction Engineer (Claims)

27. On a Federal-aid project, if offer is accepted, prepares a request to the FHWA division office in accordance with established agreements for Federal participation in the claim settlement. The request shall relate the facts of the claim including the legal and contractual basis for the claim, the cost data, and other facts supporting the award or settlement.
28. If offer is rejected, helps prepare UDOT for whatever legal action the Contractor may take.
29. On a Federal-aid project and claim proceeds into litigation, furnishes the FHWA division office in accordance with established agreements prior notification, verbal or written, of court trial dates.

**Responsibility:** Contractor

30. If Contractor rejects Department's offer, has option of appealing to State Procurement Appeals Board in accordance with Utah Code 63-56-54 or filing suit in the District Court in accordance with Utah Code 63-56-59.

**Responsibility:** Contractor or Department

31. A Contractor or the Department may appeal a decision of the State Procurement Appeals Board to the Court of Appeals. (Utah Code 63-56-58)

**Responsibility:** Deputy Construction Engineer (Claims)

32. Maintains records on all active and resolved claims. Prepares reports showing status of active, potential, and settled claims.